

FILED 10 MAY 14 17:12 USDC-ORN

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

CRYSTIN RARIN BAS QUALLS,

Petitioner,

v.

RICK COURSEY,

Respondent.

Civ. No. 09-329-CL

**OPINION AND ORDER**

**PANNER, District Judge:**

Magistrate Judge Mark D. Clarke filed a Report and Recommendation ("R and R") [#31], and the matter is now before this court. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). Petitioner and respondent both filed objections to the R & R. (Respectively [#35] and [#36].) Accordingly, I have reviewed the file of this case *de novo*. See 28 U.S.C. § 636(b)(1)(c);

McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). I conclude the R & R is correct.

For the reasons stated in the R & R, petitioner's objection regarding procedurally defaulted claims petitioner requested his PCR attorney raise before the Oregon Court of Appeals and the Oregon Supreme Court is meritless.

Petitioner's objection that the denial of a certificate of appealability is premature is foreclosed by Rule 11(a) of the Rules Governing Section 2254 Cases In The United States District Courts. ("The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.")

#### CONCLUSION

Magistrate Judge Clarke's Report and Recommendation (#31) is adopted. Because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is DENIED as to the dismissed claims. See 28 U.S.C. § 2253(2). Respondent is granted 30 days to submit arguments on the merits of petitioner's remaining claim.

IT IS SO ORDERED.

DATED this 14 day of May, 2010.



OWEN M. PANNER  
U.S. DISTRICT JUDGE